IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 10 of 1995
INCOME TAX REFERENCE No 118 of 1997
INCOME TAX REFERENCE No 36 of 1998
INCOME TAX REFERENCE No 37 of 1998
INCOME TAX REFERENCE No 8 of 1997
INCOME TAX REFERENCE No 47 of 1998
INCOME TAX REFERENCE No 26 of 1998

(seven matters)

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-
and
Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SHASHIKALABEN NAVNITLAL

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner
MR RK PATEL with MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In all these references at the instance of the revenue, the following common question is referred to us in respect of assessment year 1983-84 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to take the average price of bonus shares for computation of capital gains in respect of sale of equity shares of Sarangpur Cotton Mfg. Co. Ltd. without reducing the cost of original shares on averaging the cost price on receipt of bonus shares ?"

2. It may be stated that in each reference, in the question referred, the number of equity shares of Sarangpur Cotton Mfg. Co. Ltd. is mentioned, but for the sake of convenience and brevity the common question set out above does not include the number of equity shares of the above Company.

3. It is an agreed factual position that all the assessees had purchased equity shares of Sarangpur Cotton Mfg. Co. Ltd. ("the Company" for short) prior to 1.6.1964. The Company had issued bonus shares to the holders of equity shares including the present assessees. When the assessees sold the bonus shares, the question of determining the capital gains on the sale of such bonus shares arose. The assessees adopted the method of average costing for bonus shares relying upon the principles laid down by the Supreme Court in CIT vs. Dalmia Investment Co. Ltd., 52 ITR 567 and CIT vs. Shekhawati General Traders Ltd., 82 ITR 788 and certain other decisions. The Income-tax Officer did not accept the above method of determining the value of the bonus shares and took the actual cost for the shares purchased i.e. for the original shares and "Nil" cost for the bonus shares and computed the tax on long term capital gain accordingly. The CIT (Appeals) decided the issue in favour of the assessees following the principles laid down by the Apex Court in the aforesaid two decisions. Hence, the revenue went in appeal before the Tribunal.

The Tribunal confirmed the order of the CIT (Appeals) and held that the cost of the bonus shares is to be determined by the method of average costing alongwith the original shares if the bonus shares ranked pari pasu and there was no other circumstance to differentiate them. The Tribunal followed it decision in

Income-tax Appeals Nos. 678 and 679 of 1987 in respect of the same assessment year.

4. At the hearing of the references, Mr Akil Qureshi, learned counsel for the revenue and Mr RK Patel, learned counsel for the assessees state that the controversy raised in these references is now concluded by the decision of the Apex Court in Escorts Farms (Ramgarh) Ltd. vs. CIT, (1996) 222 ITR 509 wherein it has been held that where bonus shares are issued and some of the original shares are sold subsequently, their actual cost has to be reckoned only on the basis of `average value' except in rare cases, where `actual cost' is notionally adopted or determined as it existed on the relevant statutory date, which may be 1.1.1954 or 1.1.1964 as the case may be. The Apex Court held that the subsequent issue of the bonus shares had the effect of altering the original cost of acquisition of the shares. The Apex Court further clarified that in case like Dalmia Investment Co. Ltd. where bonus shares are issued and some of the original shares are sold subsequently, their actual cost has to be reckoned only on the basis of `average value' but there could be rare cases (Shekhawati General Trades Ltd., 82 ITR 788) where `actual cost' is notionally adopted or determined as it existed on the relevant statutory date because the shares were purchased prior to such statutory date.

5. Mr Patel for the assessees states that in all the present cases the original shares were purchased before the relevant statutory date and, therefore, the Tribunal was justified in following the principle laid down in Shekhawati General Traders Ltd.

6. We accordingly hold that the determination of capital gain in respect of sale of equity shares in question of Sarangpur Cotton Mfg. Co. Ltd. by the assessees shall be made in accordance with the principles laid down by the Supreme Court in Escorts Farms (Ramgarh) Ltd. vs. CIT, 222 ITR 509.

7. Mr Patel for the assessees submits that the principles laid down in the aforesaid decision of the Apex Court will have to be read alongwith the principles laid down in Shekhawati General Traders.

8. We are of view that since the decision in Shekhawati General Traders has not been overruled or modified by the Supreme Court in Escorts Farms (Ramgarh) Ltd. (Supra), it will be for the assessees to point out the relevant facts to show that the cases at hand will be

governed by the principles laid down in Shekhawati General Traders which are still applicable to the exceptional cases as pointed out in Escorts Farms (Ramgarh) Ltd. case.

The references stand disposed of with no orders as to costs.

Sd/-

(J.M. Panchal, J.)

Sd/-

(M.S. Shah, J.)

sundar/-